
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Floyd County Broadcasting Company, Inc.
WMDJ-FM
Martin, Kentucky

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File No. EB-02-DT-988

NAL/Acct. No. 200332360001

FRN: 0005-0045-51

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 6, 2002

By the District Director, Detroit Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Floyd County Broadcasting Company, Inc. ("Floyd County Broadcasting"), the licensee of WMDJ-FM, has apparently violated Section 11.35(a) of the Commission's Rules ("Rules")¹ by failing to have Emergency Alert System (EAS) equipment installed and operating. We conclude that Floyd County Broadcasting is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. Background

2. On July 30, 2002, an FCC agent from the Detroit Office conducted an Emergency Alert System inspection of WMDJ-FM. At the time of inspection, he found no EAS equipment installed. The station manager told him that WMDJ-FM had never installed any EAS generating and receiving equipment at the station.

III. Discussion

3. Section 11.35(a) of the Rules requires all broadcast stations to ensure that EAS generating and receiving equipment is installed so that the monitoring and transmitting functions are available during the times the station is in operation. At the time of inspection, Floyd County Broadcasting failed to have Emergency Alert System equipment installed and operating.

4. Based on the evidence before us, we find that Floyd County Broadcasting willfully² and repeatedly³ violated Section 11.35(a) by failing to install and maintain operational EAS equipment. *The*

¹ 47 C.F.R. § 11.35(a).

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference

Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount at \$8,000 for EAS equipment not installed or operational. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, (the "Act"),⁵ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that Floyd County Broadcasting has previously had an overall history of compliance and showed good faith surrounding the violations by the voluntary disclosure of information; however, the violation is egregious. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that an eight thousand dollar (\$8,000) monetary forfeiture is warranted.

IV. Ordering Clauses

5. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Floyd County Broadcasting Company, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willfully violating Section 11.35(a) of the Rules by failing to install and have operational EAS equipment.

6. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Floyd County Broadcasting SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332360001, FRN: 0005-0045-51.

8. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332360001, FRN: 0005-0045-51.

9. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices

to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

10. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Floyd County Broadcasting Company, Inc., P. O. Box 1530, 1428 Highway 80, Martin, Kentucky 41649.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office

Attachment A - FCC List of Small Entities, October 2002.

⁸ See 47 C.F.R. § 1.1914.